



Guidance

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PERMITTING COLLOCATED FACILITIES

Under EPA and AQD policy, emissions from sources that are located on contiguous or adjacent property may need to be aggregated in order to determine the category of permitting required; either permit exempt source (actual emissions less than 40 tpy), minor source (potential to emit less than 100 tpy), major source for Title V (actual emissions or the potential to emit greater than 100 tpy), or major stationary source (Prevention of Significant Deterioration or PSD). The purpose of this document is to explain current EPA and AQD policy and provide examples of theoretical situations and of AQD past determinations. The Guidance Sheet is a resource for the regulated community to assist them in understanding what can be a complicated issue. Any emissions source owner that has questions about the permit requirements for a particular site with collocated facilities is advised to ask the AQD for clarification. For complex situations, it may be necessary for the source owner to apply for an Applicability Determination.

I. Definitions

OAC 252:100-8-2 defines “major source”, as it pertains to Title V major source permitting and New Source Review (NSR) for PSD sources, as follows:

“Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping... For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

Likewise, OAC 252:100-7-1.1 defines “facility”, as it pertains to minor source permitting, as follows:

“Facility” means all of the pollutant-emitting activities that meet all the following conditions:

- (A) Are under common control.
- (B) Are located on one or more contiguous or adjacent properties.

- (C) Have the same two-digit primary SIC Code (as described in the Standard Industrial Classification Manual, 1987).

Both of these definitions are based on language from the EPA Title V program as found in 40 CFR Part 70, Section 70.2 Definitions:

“Major source” means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that is described in paragraph (1 – HAPs), (2 – regulated air pollutants in attainment areas), or (3 – nonattainment area pollutants) of this definition. For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit primary SIC code) as described in the Standard Industrial Classification Manual, 1987.

Thus, in order to require the aggregation of emissions from collocated sources, all three criteria must be met: (1) contiguous or adjacent property, (2) common control, and (3) same two-digit primary SIC code. Since the AQD definitions are based directly on the CFR Part 70 definition, it follows that any AQD policy regarding collocated sources should follow EPA guidance. The EPA has not written specific rules that give instruction on how the definition for major source is to be applied. Rather, EPA has issued applicability determinations and guidance memos that give direction on how these three criteria are to be interpreted.

II. EPA Guidance

A. Contiguous or Adjacent Property

Determination of whether emission sources are located on contiguous or adjacent property is the simplest of the three determinations. A good summary of EPA guidance on contiguous or adjacent property was made during a RO/S/L conference call on January 25, 1996, as transcribed on March 2, 1999.

“Guidance: Contiguous or adjacent property determinations are resolved **on a case-by-case basis** (*emphasis added*). The phrase has not been defined in literal terms (i.e., number of feet allowed between two or more sources that are physically separated from each other) or through an empirical formula. There are some general guidelines available (*paraphrased*).

- (a) A physical separation of property does not in itself constitute separate sources; for example, the fact that some property at a plant site is divided by a highway or a railroad right-of-way does not create separate and distinct sources (59 FR 12412, 3/16/94);

- (b) EPA has stated that a distance of 20 miles is too far (45 FR 52895, 8/7/80);
- (c) EPA made a determination that two GM auto plants, separated from each other by approximately one mile (and connected by a private rail), could be considered one major source (E. Reich to S. Rosenblatt memo, 6/30/81);
- (d) Region 4 determined that two bulk gasoline terminals located approximately one-half mile from each other should be considered one source primarily based upon geographic **proximity** and secondarily upon shared diesel and water pipelines (J.A. Harper to S. Jenkins letter, 5/18/95);
- (e) In a determination involving a natural gas processing company and a collocated natural gas transmission company (same owner; contiguous property; different SIC), EPA reiterated its position on defining **distances** by stating that, “EPA is unable to say precisely at this point how far apart activities must be in order to be treated separately. The Agency can answer that question only through case-by-case determinations” (45 FR 52695, 8/7/80; J. Divita to E. Bell, 11/3/86).

The AQD currently considers “within a contiguous area” as any source located within ¼ mile of another commonly owned source (Frequently Asked Questions on Title V, 9/16/98). This is a simplification of EPA guidance and is appropriate in most cases, but may not adequately deal with situations with more extenuating circumstances; such as when sources are not within a ¼ mile of each other, but operationally support each other and are “connected” by some means of transportation (for example; pipeline, road, or railroad). These situations must be addressed on a case-by-case basis. The facts that must be considered are:

- (a) *Are the entities located in different counties and are the property boundaries located more than five miles apart? If the answer to this question is no and yes to (b) and (c), then these air emission entities will likely be considered adjacent to each other. If the answer to this question is yes, then based on geographic distance and logistics these air-emitting entities are not considered adjacent.*
- (b) *Do these facilities operationally support each other?*
- (c) *Are these facilities physically joined in any manner?*

B. Common Control

EPA often addresses the issue of common control by following the general definition of control used by the Securities and Exchange Commission (SEC). ¹ The SEC considers control “the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person (or organization or association) whether through ownership of voting shares, contract, or otherwise.” The “possession of the power to direct the management and policies of an organization” can only be determined through a detailed review of business agreements and all relevant facts.

Through guidance and individual determinations, EPA has established three general factors to be considered by permitting and regulatory authorities in determining common control as used in the single source determination. First, common control can be established through ownership (i.e., same parent company or a subsidiary of the parent company). Second, common control can be established if an entity such as a corporation has decision-making authority over the operations of a second entity through a contractual agreement or a voting interest. Third, if common control is not established by decision-making or ownership, then one should next look at whether there is a contract for service relationship between the two entities or if a support/dependency relationship exists between the two entities such that a common control relationship exists.² If entities respond in the positive to one or more of the major indicators of control, then the new company is likely under the control of the existing source, or under common control by both entities, and cannot be considered a separate entity for permitting purposes.

When one entity locates on another's land a control relationship is to be presumed.³ For entities that wish to contest this presumption, a list of screening questions to establish whether control exists between the two facilities has been developed through EPA guidance and determinations. The questions and examples below provide indicators for making a common control and support/dependency determination as a part of a single source determination. Such determinations should be made on a case-by-case basis weighing all the specific facts in each case.

1. Common control can be established through ownership (i.e., same parent company or a subsidiary of the parent company). If a group of sources share the same parent corporation or subsidiary of a parent corporation, common control can be established through ownership of two entities.

- (a) *Do the facilities share common workforces, plant managers, security forces, corporate executive officers, or board of executives?*
- (b) *Will managers or other workers frequently shuttle back and forth to be involved actively in both facilities?*
- (c) *Do the facilities share common payroll activities, employee benefits, health plans, retirement funds, insurance coverage, or other administrative functions?*

2. Common control can be established if an entity such as a corporation has decision-making authority over the operations of a second entity through a contractual agreement or a voting interest.

- (a) *What are the contractual arrangements for providing goods and services? What does the contract specify with regard to pollution control responsibilities?*

- (b) *Do the facilities share equipment, other property, or pollution control equipment? Can the managing entity of one facility make decisions that affect pollution control at the other facility?*
- (c) *Who accepts the responsibility for compliance with air quality control requirements? What about responsibility for violations of the requirements?*

3. Is there a contract for service relationship between the two companies? Does a support/dependency relationship exist between the two companies such that a common control relationship exists? ⁶

In making a contract-for-service relationship determination, temporary and contractor operated units should be included as part of the source with which they operate or support.⁴ A determination of common control may be made on the basis of indirect control, such as when the goods or services provided by a collocated, contract-for-service entity are integral to or contribute to the output provided by a separately 'owned or operated' activity with which it operates or supports.⁵

Where more than 50% of the output or services provided by one facility is dedicated to another facility that it supports, then a support facility relationship is presumed to exist. Even where this 50% test is not met, however, other factors may lead the permitting authority to make a support facility determination. Support facility determinations can depend upon a number of financial, functional, contractual, and/or other legal factors. These include, but are not limited to: (1) the degree to which the supporting activity receives materials or services from the primary activity (which indicates a mutually beneficial arrangement between the primary and secondary activities); (2) the degree to which the primary activity exerts control over the support activity's operations; (3) the nature of any contractual arrangements between the facilities; and (4) the reasons for the presence of the support activity on the same site as the primary activity (e.g., whether the support activity would exist at that site but for the primary activity). Where these criteria indicate a support relationship, permitting authorities may conclude that a support activity contributing more or less than 50% of its output may be classified as a support facility and aggregated with the facility it supports as part of a single source.

- (a) *Was the location of the new facility chosen primarily because of its proximity to the existing facility to enable the operation of the two facilities to be integrated? In other words, if the two facilities were sited much further apart, would that significantly affect the degree to which they may be dependent on each other?*
- (b) *Do the facilities share intermediates, products, byproducts, or other manufacturing equipment? Can one source purchase raw materials from and sell products or byproducts to other customers?*
- (c) *Will materials be routinely transferred between the facilities? How often will this transfer take place and how much will be transferred? Will materials be transferred to other facilities? If so, how much?*

- (d) *Will the production process itself be split in any way between the facilities, i.e., will one facility produce an intermediate product that requires further processing at the other facility, with associated air pollutant emissions?*
- (e) *What is the dependency of one facility on the other? If one shuts down, what are the limitations on the other to pursue outside business interests?*
- (f) *Does one operation support the operation of the other? What are the financial arrangements between the two entities?*

If the facts establish a support relationship, a facility and its support facility may be under "common control" so as to make them a single source. A full evaluation should be undertaken to determine whether the two facilities are under common control.

Described below are five hypothetical situations that illustrate how the above-mentioned guidance should be applied. Note that these are examples only and that each decision made by ODEQ regarding collocated facilities is made on a case-by-case basis.

Example 1:

ABC Power Company (ABC) is located next to XYZ Manufacturing Company (XYZ). XYZ purchases power from ABC to support its manufacturing operations. ABC, however, produces power for thousands of customers within the State. In this example, we have two separate facilities. ABC, though supporting XYZ, also provides power to thousands of other customers. Therefore, ABC clearly is an independent power company, whose primary activity goes beyond supporting XYZ's operations. Also, there is no common ownership/control between the two operations.

Example 2:

XYZ Manufacturing owns and operates a boiler (located in a separate building from the manufacturing operations) that generates process steam for the manufacturing operations. In this case, we have common ownership, the activities take place at the same location, and the steam generating boiler's primary activity is to support the manufacturing operations. Therefore, the boiler would be classified as part of the manufacturing operation. In this case, both operations would be considered as part of the same facility.

Example 3:

A wood furniture manufacturing plant owns and operates a wood-fired electric generating boiler. The electricity that is generated from this boiler is sold to a power company for use and distribution to its customers throughout the State. The boiler does not directly supply any power to the wood manufacturing plant. However, this boiler does primarily support the wood furniture manufacturing business because its main purpose is to provide an innovative means of disposing of the wood waste from the manufacturing plant. Therefore,

in this case, the wood-fired electric generating boiler would be classified as part of the wood furniture manufacturing operations and would be considered to be part of the same facility.

Example 4:

We have the same facts as described in Example 3, except that the wood-fired electric generating boiler is not only charged with wood waste from its own wood furniture operations, but also receives wood waste from other manufacturing customers. The issue again is whether or not the primary activity of this boiler supports the wood manufacturing plant. If 50% or more of the waste charged into this boiler is from outside entities, the wood-fired electric generating boiler is primarily in the business of generating power (not disposing of the wood furniture manufacturing plant's wood waste) and would be considered to be a separate facility from the wood furniture manufacturing operations. If less than 50 % of the waste charged into this boiler is from outside entities, then the primary activity of this boiler is to support the wood furniture manufacturing operations in disposing of its waste. In this case, both the wood manufacturing operations and the electric generating boiler would be considered to be part of the same facility.

Example 5:

A manufacturer decides to increase production but, instead of adding additional production capability to its existing plant, contracts with another company to build a second plant next door. For example, Company A, which paints widgets, might wish to increase its output of painted widgets at times of high demand. Company A contracts with Company B to build two new painting lines on adjacent property owned by Company B. Company A will buy all of Company B's output, but Company B may only paint widgets when ordered by Company A. Furthermore, Company A supplies all the paint and all the widgets to be painted by Company B. Company A controls both input and output. To make the agreement workable, Company A pays Company B a certain amount for sitting idle in between rush orders. In essence, Company A is contracting to use Company B's paint lines, like leasing a vehicle. Alternatively, one could say that Company B's facility is an annex to the Company A plant, an adjunct facility that allows Company A to increase production at a nearby site. If there were no contract, one could say that Company B's facility is independent of Company A's, that it has the capability of painting and selling widgets to other customers. That it "stands alone." But, given the contract between the two, Company A has control over painting activities at Company B's plant and thus over its air polluting activities. In terms of air pollution control regulation, Company B's facility must be considered part of Company A's facility.

C. Same Two-digit Primary SIC Code

Many collocated facilities share the same two-digit primary SIC code. However, the EPA has issued guidance that different SIC groups may be aggregated if they meet a "primary activity" or "support facility" test.

1. Primary Activity Test

The activity in which a facility is primarily engaged determines what SIC code is assigned to that facility. Typically, a value of receipts or revenues approach is used to determine the primary activity. If revenue and receipts are not available for a particular facility, the number of employees or production rate may also be compared. If a facility performs more than two types of operations, whichever operation generates the most (not necessarily the majority) revenue or employs the most personnel, is the operation in which the facility is primarily engaged. For example, a natural gas liquids (NGL) plant might have the extraction equipment and compressor engines (for inlet gas compression and/or for residue gas recompression) at the same location. The SIC code for this facility would be 1321; whereas, if the engines were not on site, their SIC code would be 4922 for natural gas transmission.

2. Support Activity Test

One source classification (SIC code) can encompass both primary and support facilities, even if they include units with different two-digit primary SIC codes. The EPA defines support facilities as “those which convey, store, or otherwise assist in the production of the principal product”.⁷ For example, the extraction equipment for an NGL plant may be at one site and the compressor engines providing either inlet gas compression and/or residue gas recompression at a different site. In this case, the compressors could be considered a support facility for the NGL plant since the NGL plant could not function without inlet and/or residue gas recompression. Likewise, a crude pipeline facility (SIC 4612) could be considered a support facility for a bulk terminal (SIC 5171), if that is the only means of introducing the product into commerce.

D. Hazardous Air Pollutants (HAPs) Section 112

HAP emissions are treated differently than criteria pollutants for Part 70 source determinations. For Title V applicability, especially in determining whether or not the source is subject to a federal NESHAP (MACT standard), HAPs are aggregated without regard to the SIC code for emission sources that are contiguous and under common control. Normally, emissions of HAPs from fugitive sources, as well as point sources, must be aggregated in this situation, although there are some NESHAP where fugitive sources need not be aggregated (Subpart HH is an example) to determine applicability.

III. Past AQD Determinations

Several past AQD determinations illustrate how specific situations were evaluated based on a case-by-case basis.

1. NGL Fractionation Plant with Collocated NGL Pipeline Station

In this instance, an NGL fractionation plant and NGL pipeline station had been constructed at the same site and later sold to company ABC. One subsidiary of company ABC owned

and operated the NGL fractionation plant and another subsidiary of company ABC owned and operated the NGL pipeline station. The two subsidiaries used maintenance, land lease, and other contracts to keep an “arms length” relationship in order to meet Federal Energy Regulatory Commission (FERC) rules for transmission companies. The NGL pipeline station supplied raw NGL to the NGL fractionation plant and pumped, filtered, and metered NGL products from the NGL fractionation plant to its pipelines for transportation to NGL markets. The two facilities also shared some equipment, most notably an NGL product recovery system for blowdowns of NGL when performing maintenance on filters, meters, and pumps. The NGL plant was a major source of HAP emissions and it was determined that HAP emissions from the NGL pipeline station must be aggregated with HAP emissions from the NGL plant. The NGL pipeline station became a major source requiring a TV permit and was subject to federal NESHAP. In this case separate TV permits were issued to each facility, even though HAP and criteria emissions were aggregated.

2. Collocated Compressor Stations

In this instance, subsidiaries of the same parent company owned two compressor stations that were located within 600 feet of each other and, therefore, were contiguous and adjacent to one another. The stations also operated under the same SIC code of 4922. However, it was determined that the stations were not “under common control” and not considered one source for TV permitting. Different individuals controlled day-to-day operations, the subsidiaries did not share the same officers or board of directors, and major decision-making for the facilities were by different individuals. One facility provided gathering and upstream services for natural gas producers and was regulated by the state and the other facility provided transmission services for natural gas in interstate commerce and was regulated by FERC. Most importantly, the two facilities were not interdependent and were not connected by any pipelines. Both stations could operate without the other facility operating; therefore, the facilities did not meet either the “primary activity” or “support facility” test.

3. Crude Oil Pipeline Breakout Station and Crude Oil Trucking Stations

In these instances, a parent company owned the major source pipeline breakout station at which one or more crude oil trucking stations was collocated. Typically, the crude oil trucking stations consisted of two small crude oil storage tanks that received produced crude oil via trucks and a LACT unit that transferred the crude oil to one of the pipelines entering the crude oil breakout station. One of the trucking stations was always owned by a subsidiary of the parent company, but there were usually one or more trucking stations owned by other companies. The breakout station was considered to be acting as a support facility for all the crude oil trucking stations. It was determined that the emissions from the crude oil trucking station owned by the subsidiary of the parent company must be included in the Title V operating permit for the crude oil breakout station. However, the crude oil trucking stations owned by other independent companies were not considered to be “under common control” and remained either minor sources or permit exempt sources.

IV. Title V Permitting Flexibility

When emissions from collocated facilities must be aggregated, the TV program gives some flexibility in the permitting process. The facilities may be permitted under one Part 70 permit with only one responsible official, or the facilities may be permitted with a separate Part 70 permit for each facility. In the latter option, each facility has a responsible official who certifies compliance with the permit. Also, it is necessary to address total emissions from all emissions at the aggregated source in both permits in order to address PSD issues. If the HAP emissions from the aggregated source exceed major source levels, then both facilities are subject to any applicable federal NESHAP (MACT standards) for their type of facility.

WHO CAN I CONTACT FOR MORE INFORMATION?

For specific assistance contact the AQD at (405) 702-4100. Forms and other information are also available at: www.deq.state.ok.us.

References:

¹ See Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Emission Offset Interpretative Ruling, 45 Fed. Reg. 59874, 59878 (Sept. 11, 1980).

² See Letter from Richard R. Long, USEPA Region 8, to Julie Wrend, Colorado Department of Public Health and the Environment, Re: Single Source Determination for Coors/TriGen (November 12, 1998); citing John S. Seitz Memorandum, "Major Source Determinations for Military Installations under the Air Toxics, New Source Review, and Title V Operating Permit Programs of the Clean Air Act" (August 2, 1996).

³ See letter from W. Spratlin, Director of Air, RCRA, and Toxics Division, EPA Region VII, to State and Local Air Directors (September 18, 1995).

⁴ See letter from John Seitz, Chief of the Office of Air Quality Planning and Standards to the Minnesota Pollution Control Agency, (November 16, 1994).

⁵ See DOD Major Source Guidance, (August 2, 1996 (page 8)).

⁶ See Draft preamble to the Part 70 revisions (notice of availability published June 3, 1997, ((62 FR 30289)).

⁷ See Letter to Jennifer B. Schlosstein, Simpson Paper Company, from Matt Haber, Chief, Permits Office (citing 45 FR 52695, August 7, 1980) November 27, 1996.